

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ANTOINE DIRAY JOHNSON,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-17-346-C
)	
ROBERT PATTON,)	
)	
Defendant.)	

ORDER

Petitioner, a state prisoner appearing pro se, has filed a Notice of Appeal and the Circuit has remanded for this Court to consider whether a Certificate of Appealability (“COA”) will issue. Before his appeal may proceed, Petitioner must be granted a COA. See 28 U.S.C. § 2253(c)(1)(A); Montez v. McKinna, 208 F.3d 862, 869 (10th Cir. 2000) (holding that § 2253(c)(1)(A) requires a state prisoner to obtain a COA regardless of whether he is seeking relief under § 2254 or under § 2241).

Petitioner is entitled to a COA only upon making a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Petitioner can make such a showing by demonstrating that the issues he seeks to raise are deserving of further proceedings, debatable among jurists of reason, or subject to different resolution on appeal. See Slack v. McDaniel, 529 U.S. 473, 483 (2000) (“[W]e give the language found in § 2253(c) the meaning ascribed it in Barefoot [v. Estelle, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the merits, . . . [t]he petitioner must demonstrate that reasonable

jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 484.

Here, Petitioner has failed to offer any basis for further proceedings. As the Court made clear in its previous order, the relief Petitioner seeks would require the Court to ignore the findings of the Tenth Circuit. This Court, of course, lacks the jurisdiction to do so. This is not a basis for reasonable debate. Accordingly, Petitioner's request for a COA is denied.

As set forth more fully herein, Petitioner's request for a Certificate of Appealability is DENIED.

IT IS SO ORDERED this 17th day of December, 2019.


ROBIN J. CAUTHRON
United States District Judge